

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

April 3, 2008

A meeting of the Board of Environmental Protection was held on Thursday, April 3, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, Ernest Hilton, M. Wing Goodale, Richard Gould, Don Guimond, Susan Lessard, and Nancy Ziegler.

Absent: Matt Scott. There are two new members awaiting appointment process completion.

<b><u>Staff:</u></b>	Bureau of Air Quality	Jeffrey Crawford
	Bureau of Air Quality	Marc Cone
	Bureau of Land and Water Quality	Robert Green
	Bureau of Land and Water Quality	Jeff Madore
	Bureau of Land and Water Quality	Marybeth Richardson

**Others:** David P. Littell, Commissioner  
Jim Brooks, Director Bureau of Air Quality  
Andy Fisk, Director Bureau of Land and Water Quality  
Cindy Bertocci, BEP Executive Analyst  
Peter LaFond, Assistant Attorney General  
Peggy Bensinger, Assistant Attorney General (Ballantyne Development - Eastern Village matter only)  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 1:30 p.m.)*

I. DEPARTMENTAL

- A. **COMMISSIONER'S COMMENTS:** Jim Brooks, Director, Bureau of Air Quality reported that Commissioner Littell was attending to Legislative matters and will join the Board later this morning. Mr. Brooks provided the Board with an update concerning Legislative matters that directly relate to the Air Bureau.

Legislation: The three major bills affecting the Air Bureau are: (1) Air Fees, (2) Outdoor Wood Boilers, and (3) Regional Greenhouse Gas Initiative.

Air Fees – The Bureau of Air Quality has a fee program consisting of two components: (1) criteria pollutants, (2) air toxic surcharge. Criteria pollutants have been listed since 1991 and air toxic surcharge since 1993. The proposed fee modifications to the existing air toxics surcharge will utilize a better air toxics inventory and a new toxics evaluation methodology provided by US EPA. The emitting source will pay a surcharge based on the pollutant toxicity and quantity emitted. This change has been enacted by Senate and the Department anticipates that Governor Baldacci will sign this bill within a week. Early revenue estimates predict an increase in funding of approximately \$850,000. It is anticipated that the surcharge fee increase will promote technology that reduces the quantities of pollutants currently emitted.

Board member Sue Lessard asked how many new positions the fee increase will fund.

*Mr. Brooks explained that no new positions will be funded and that the increased revenue supports maintenance of current programs which have been impacted by deficits associated with previous budget cuts and yearly increases to personnel and equipment costs.*

Outdoor Wood Boilers – The Joint Standing Committee on Natural Resources spent much time in review of the proposed Chapter 150 rules. This rule was voted ought-to-pass out of committee with modifications: (1) modified setbacks to provide for setbacks from property lines and from residences; (2) eliminated increased setback to schools, and (3) included a category for outdoor units that use pellets – noting the clean technology emerging with the use of pellet fuel. This last modification will require changes to Chapter 150 to include standards for pellet units.

Outdoor Wood Boiler Bill – A second Legislative Bill concerning outdoor wood boilers gives the Department's Commissioner emergency powers to shut down a unit that is creating a nuisance or a danger to public health or safety and creates a fund to purchase and replace the problem boiler. It also allows the Department to use enforcement penalties through a supplemental environmental program to help fund the buy-back of problem boilers.

Board member Nancy Ziegler asked what would constitute an emergency.

*Jim Brooks noted that the bill does not define what constitutes an emergency but he provided the Board with a possible scenario where the Commissioner would likely utilize emergency authority to shut down a unit: (1) an operating outdoor wood boiler with a low stack, utilizing wet wood, located in an urban area, causing an elderly neighbor on oxygen to be hospitalized.*

Board member Elizabeth Ehrenfeld asked if wood boilers could burn both pellets and solid wood fuel.

*Mr. Brooks explained that pellet stoves use an auger system to feed the pellet fuel into the burn chamber and that solid wood fuel use is not possible.*

Regional Greenhouse Gas Initiative (RGGI) – A Legislative Bill amendment modifies the statute concerning definitions for regional consistency and clarifies the Department's authority. The goal is to license sources prior to the start of the actual auction program. The first auctions are currently scheduled for mid-September and December. Matters associated with a voluntary renewable market set-aside program are controversial. A program at Public Utilities Commission (PUC) allows companies and individuals to pay a premium for set-aside credits to offset fossil fuel impacts. The amendment offered limits the set-aside/retirement to 2% of the total number of Maine's allowance. Retirement set-aside account represents ½ of a percent of all electricity sold in the State of Maine. There is still much debate on this subject and if this bill passes there will be additional rulemaking to follow.

The bill that would have directed the Department to develop rules for CO<sub>2</sub> emission standards for power plants resulted in a moratorium on coal gasification plants. The Department was charged to research coal gasification plants and report back to the Committee. DEP will also continually update the BEP on this effort.

Board member M. Wing Goodale asked if the bill was enacted.

*Mr. Brooks confirmed that the bill was enacted.*

Chairman Hilton asked if facilities like the Wyman Station would be involved in the RGGI auction program and, if so, for full capacity or some portion.

*Mr. Brooks speculated that Wyman may calculate CO<sub>2</sub> emissions and establish a facility target. The unit is operating at less than 5% capacity using #6 fuel oil. From a power plant perspective combustion of #6 fuel oil is not as efficient as a combined cycle gas facility. It is not known if Wyman will participate in the auction program or at what level.*

Board member M. Wing Goodale asked about the status of the toxics bill.

*Mr. Brooks explained that although he has not been following this particular bill, there was a split vote out of committee and the matter remains in discussion.*

Commissioner Littell reported on the following:

Budget: The budget was passed with the earlier anticipated cuts. The air fee bill and the water bill were enacted. The “in-lieu fee” program for wetland compensation is now law, and the vernal pool provisions have been enacted in both houses.

Public Utilities Committee: The wind power bill (LD 2283) was voted out of Committee as ought-to-pass. The Governor’s bill concerning energy infrastructure corridors (LD2255) changes permitting for major energy projects. The bill as amended out of committee accomplishes three major tasks: (1) gives the PUC the authority to designate new corridor areas; Once designed the DEP will implement environmental permitting authority within the corridor using a consolidated permitting process; (2) PUC needs a DEP certification to continue to develop the transmission corridor, and (3) PUC has eminent domain authority – this supports co-location of transmission lines. This bill may be amended further by the house or senate.

Board member Nancy Ziegler asked about the Board’s role in the certification process. *Commissioner Littell explained that the bill does not change the traditional relationship and authority of the DEP/BEP. Commissioner Littell noted that the certification is not limited to electrical transmission lines but is broad and includes LNG pipelines, CO2 pipelines (etc.). Commissioner Littell will provide Board members with a copy of the most recent amendments to LD 2255 and LD 2283.*

The Department will be examining the environmental impacts of Canadian power which may be imported into Maine including its CO2 footprint with a focus on the quality of Canadian fuel (clean/dirty) and possible impacts of hydro energy generation.

Board member M. Wing Goodale asked the Commissioner for an update on the toxics bill. *Commissioner Littell updated the Board on LD2048 amendments noting that industry exemptions were among some of the modifications. Commissioner Littell also noted that Washington, Massachusetts and Connecticut have similar bills pending.*

Board member Elizabeth Ehrenfeld asked if the rules limiting emissions of greenhouse gases from automobiles would allow for the sale of certain diesel cars now that the low sulfur fuel may be available.

*Commissioner Littell confirmed that Maine has joined with other states in a lawsuit to promote action from the federal government on carbon dioxide emissions from vehicles. The state is awaiting car certification approval by California for specific diesel vehicles. With respect to the phase in of the low sulfur gas, 20% of diesel could still be high sulfur and impact the emission performance of the non-compliant vehicle. To DEP’s knowledge, the fuel sources for Maine should not be an issue because all on-road Diesel in Maine is ultra-low” sulfur diesel.*

**B. COMMENTS FROM THE BEP CHAIR:**

Chair Hilton introduced Peter LaFond to the Board. Mr. LaFond is new to the Natural Resource Division of the Attorney General's Office. Mr. LaFond provided Board members with a brief summary of his professional experience.

**C. EXECUTIVE ANALYST COMMENTS:**

Ms. Bertocci reminded Board members that the Governor's Energy Efficiency Summit is being held at the Civic Center and they are welcome to attend the afternoon portion.

The Board will soon welcome two new members: Lissa Widoff from Freedom and P. Andrews Nixon from Brunswick. It is likely that they will be attending the next regular meeting of the Board.

Chairman Hilton noted that Mr. Nixon served as a member of the Environmental Improvement Commission (the predecessor to the BEP) in the early 1970's.

Board member Richard Gould remarked that the bill proposing an increase to the per diem paid to LURC and BEP was not supported by the Legislature. Cindy Bertocci commented that the meal allotment increase was still being considered.

**D. BOARD CALENDAR:**

It was noted that we are looking at a June schedule for possible consideration of a HoltraChem evidentiary hearing. Board member Ziegler noted that the first week in June is not possible for her and indicated a strong desire to participate if other timeframes were being considered.

**E. DEPARTMENTAL ORDERS:** Reviewed

**F. EXECUTIVE SESSION:** None

**II CONSENT AGENDA ITEMS**

1. Minutes: January 17, 2008

Board voted (6-0-1-1) on a motion to approve consent agenda item number 1 as presented.

*Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused. Board member Matt Scott was absent.*

2. Minutes: February 7, 2008

Board voted (7-0-0-1) on a motion to approve consent agenda item number 2 as presented.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent.*

3. Minutes: February 21, 2008.

Board voted (6-0-1-1) on a motion to approve consent agenda item number 3 as presented.

*Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld recused. Board member Matt Scott was absent.*

Board voted (7-0-0-1) on a motion to approve consent agenda items 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 as presented:

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent.*

4. WRCM, INC., dba NEWCASTLE CHRYSLER DODGE JEEP, Newcastle - Administrative Consent Agreement (BAQ)
5. BORALEX ASHLAND CP, Ashland - Administrative Consent Agreement (BAQ)
6. FRANKLIN CHRYSLER, INC., Farmington – Administrative Consent Agreement (BAQ)
7. THIBODEAU REALTY & DEVELOPMENT CORPORATION and VAUGHN THIBODEAU AND SONS, INC., Bangor/Hermon - Administrative Consent Agreement and Enforcement Order / NRPA, SITE (BLWQ-Water)
8. PAUL STIFFLER, St. Albans - Administrative Consent Agreement and Enforcement Order / NRPA, E&S (BLWQ-Land)
9. PHILLIP GILPATRICK d/b/a GILPATRICK LOGGING, North Berwick - Administrative Consent Agreement / NRPA, E&S (BLWQ-Land)
10. FRED WHEELER and W & S WOOD PRODUCTS, INC. d/b/a SHERWOOD WOOD PRODUCTS, Manchester - Administrative Consent Agreement and Enforcement Order / NRPA, PIWA, E&S (BLWQ-Land)
11. DORA HIGHLANDS DEVELOPMENT CORPORATION, Boothbay Harbor – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
12. VAUGHN THIBODEAU AND SONS, INC., Stockton Springs – Administrative Consent Agreement (BLWQ – Land)
13. RUSSELL COOK and SUSAN COOK, Harrison – Administrative Consent Agreement (BLWQ – Land)
14. JAMES RUTLAND, Lincolnville – Administrative Consent Agreement (BLWQ-Land)

### III. Regular Agenda

1. STATE IMPLEMENTATION PLAN // INTERSTATE AIR POLLUTION TRANSPORTATION – Clean Air Act Section 110(a)(2)(D)(i) Amendments (Adoption)  
Staff: Jeffrey S. Crawford, Bureau of Air Quality

The Board voted (7-0-0-1) on a motion to adopt amendments to the State Implementation Plan (SIP) concerning Interstate Air Pollution Transport. The proposed SIP amendments demonstrate that emissions from Maine do not contribute significantly to other state's non-attainment or interfere with the maintenance of the 8-hour ozone or PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS); demonstrating no significant deterioration of air quality. The Board voted pursuant to 38 M.R.S.A. Sections 341-D(1-B) and 585-A.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Susan Lessard and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent.*

2. CHAPTER 149 GENERAL PERMIT REGULATION FOR NON-METALLIC MINERAL PROCESSING PLANTS / NEW – (Post to Public Hearing)

And

#### CHAPTER 115 MAJOR AND MINOR SOURCE AIR EMISSION LICENSE REGULATIONS / AMENDMENTS -- (Post to Public Hearing)

Staff: Marc Cone, Bureau of Air Quality

The Board voted (7-0-0-1) on a motion to post the proposed amendments to Chapter 115, Major and Minor Source Air Emission License Regulations which exempts rock crusher units licensed under Chapter 149, and post to public hearing new Chapter 149, General Permit for Nonmetallic Mineral Processing Plants for stationary and portable units that fall below the federal new performance standard licensing threshold under provisions of Chapter 137. A May 15, 2008 public hearing is anticipated. The Board voted pursuant to 38 M.R.S.A. Sections 341-D(1-B), 585-A and 590.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Susan Lessard and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent.*

3. BALLANTYNE DEVELOPMENT, LLC - EASTERN VILLAGE / PETITION TO MODIFY, REVOKE, OR SUSPEND SUBMITTED BY PAUL AUSTIN (decision)

Staff: Robert Green, Bureau of Land and Water Quality

The Board voted (7-0-0-1) on a motion to dismiss the petition submitted by Paul Austin et al. seeking to revoke, modify, or suspend the license issued to Ballantyne Development LLC (L-23643-L3-A-N and L-23643-TE-B-N) which approved Eastern Village, a 152-unit residential subdivision in Scarborough. The Board voted pursuant to 38 M.R.S.A. Section 341-D(3) and 06-096 CMR Chapter 2, Rules Concerning the Processing of Licenses and Other Administrative Matters.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Susan Lessard and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent.*

***Next Regular Meeting – Thursday, May 1, 2008 – Holiday Inn / Ground Round***